

No. 83-1568

Supreme Court, U.S.

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In the Supreme Court of the United States

OCTOBER TERM, 1983

ARTHUR A. COIA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT*

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that the court of appeals erred in reversing an order dismissing an indictment on the ground that it was not brought within the five-year statute of limitations period.

On September 23, 1981, petitioners were charged in an indictment returned in the United States District Court for the Southern District of Florida with conspiracy, beginning in 1973 and lasting at least until December 1977, to violate the Racketeer Influenced and Corrupt Organizations Act (RICO), in violation of 18 U.S.C. 1962(d). The indictment alleged that petitioners and others conspired to use their influence over an international union, its subordinate bodies, and affiliated employee benefit plans to funnel the union's insurance and service business into insurance and service companies they had established. The indictment

also alleged that the conspirators thereafter looted the insurance premiums through the use of kickbacks, payoffs, unearned salaries and fees, and improper personal expenses (Pet. App. A1-A26).

On March 12, 1982, the district court, acting on a recommendation of a magistrate (Pet. App. A27-A40), dismissed the indictment as being barred by the statute of limitations. It ruled that the RICO conspiracy required an overt act, that such a conspiracy was deemed to be completed at the time of the last overt act, and that the only overt act alleged within the limitations period was insufficient to be in furtherance of the conspiracy (Pet. App. A118-A128). The court of appeals reversed. It concluded that an overt act is not essential to a conspiracy charge under the RICO statute and that the indictment on its face satisfied the statute of limitations (Pet. App. A129-A147).¹

Petitioners contend (Pet. 26-33) that a RICO conspiracy under 18 U.S.C. 1962(d) requires proof of an overt act. They also contend (Pet. 34-52) that the court below erred in ruling that a conspiracy "is presumed to exist until there has been an affirmative showing that it has terminated." Finally, they contend (Pet. 53-59) that the indictment on its face does not allege facts showing that it is not barred by the statute of limitations. Whatever the merits of petitioners' contentions, they are not presently ripe for review by this Court.² The court of appeals' decision places petitioners in precisely the same position they would have occupied if the

¹ Judge Clark concurred in the reversal but disagreed with the holding of the majority that it need not follow what it considered to be a dictum in *United States v. Phillips*, 664 F.2d 971, 1038 (5th Cir. 1981), cert. denied, 457 U.S. 1136 (1982).

² It is now almost 30 months since the return of the indictment and over two years since the district court's dismissal order. Further interlocutory review at this time would cause additional delay in trial of the charges against petitioners.

district court had denied their motion to dismiss. If petitioners are acquitted following a trial on the merits, their contentions will be moot. If, on the other hand, petitioners are convicted and their conviction is affirmed on appeal, they will then be able to present their contentions to this Court, together with any other claims they may have, in a petition for a writ of certiorari seeking review of a final judgment against them. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.³

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

APRIL 1984

³Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests.